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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
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: # :

CIVIL APPELLATE JURISDICTION

FIRST APPEAL (ST) NO.16362 OF 2002
IN
LAND REFERENCE NO.23 OF 1996

Konkan Railway Corporation Ltd., ..Appellants
Having its corporate office at
Belapur Bhavan, CBD Belapur,
New Bombay.

V/s.

1. Shri Sonu Laxman Harekar ..Respondent
   Age 56 yrs., Occ.Agriculturist (Org.Claimant)

2. Pandurang Laxman harekar
   Occ.Agriculturist
   Both R/of Kamthekhurd,
   Tal-Chiplun, Dist.Ratnagiri.

And

3. The Special Land Acquisition ..Respondent
   officer, Ratnagiri. (org.Refree)

Ms.Kiran Bhagalia for the appellants.

Mr.M.M.Vaidya for the Respondents.

Coram : S.B.Mhase &@@
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R.S.Mohite,JJ@@
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Date : 12.10.2004.

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Judgment :- (Per : S.B.Mhase,J)@@
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. Heard both sides.
. Admit.

1. With the consent of the parties, the appeal is heard finally and is being disposed of as per the following order.

2. The land of the respondent nos.1 and 2 admeasuring 1 hector 34.80 R from the Gat Nos.535, 521, & 344 was acquired by the Special Land Acquisition officer on 26.7.1995 for the Konkan Railway project. The respondent nos.1 & 2 have received an amount of award under protest on 16.6.1995 and have filed a land reference before the Special Land Acquisition officer. The special Land acquisition officer has referred the said matter to the Civil Judge, Senior Division, Ratnagiri. The said Land Reference was numbered as 23 of 1996. It was decided on 3.1.2001 and it was directed that the respondent nos.1 & 2 are jointly entitled to receive enhanced compensation of Rs.4,12,380 i.e. Rs.2,06,190/- each. It was further directed that they are entitled to Rs.4,12,380/- as 30% solatium under Section 23(2) of the Land Acquisition Act. In addition to that they were entitled to 12% component on the aforesaid amount from the date of notification under section 4 of Land Acquisition Act i.e. from 12.12.1991 till the date of taking possession i.e. till 16.6.1995. It was further directed that 9% interest p.a. shall be paid from the date of notification i.e. from 12.12.1991 upto to one year and thereafter at the rate of 15% p.a. This award-decree passed in the Land Reference by the Civil Judge, Senior Division, Ratnagiri is challenged by the Konkan Railway since the acquisition was carried out by the Special Land Acquisition officer for acquiring body of Konkan Railway. However, in a Land Reference the respondents have not shown the Konkan Railway as a party and therefore, the land reference was decided in the absence of Konkan Railway being party respondent before the Civil Judge, Senior Division, Ratnagiri.

3. Under these circumstances, the appellants submitted this appeal alongwith a leave application since the appellants were not party to the initial proceedings. This court by order dated 29.4.2002 granted leave to file this appeal. Thereafter the matter is heard finally today by this court.

4. The learned Advocate for the appellants submitted that the appellants were not a party to the initial proceedings and they had no opportunity

to contest the claim made by the respondents for enhancement of the compensation. The learned Advocate placed reliance on the Judgment of the Apex court in the case of M/s.Neyvely Lignite Corpn.@@ AAAAAAAAAAAAAAAAAAAAAAAAAAA Ltd., V/s. Spl. Tahsildar (Land Acquisition),@@ AAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAAA Neyvely reported in AIR 1995 SUPREME COURT 1004. It@@ AAAAAAA has been observed by the Apex court that-

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> The beneficiary, i.e. local authority or company a co-op.society registered under the relevant State law, or statutory authority is a person interested to determine just and proper compensation for the acquired land and is an aggrieved person. The beneficiary has the right to be heard by the Collector or the Court. If the compensation is enhanced it is entitled to canvass its correctness by filing an appeal or defend the award of the Collector. If it is not made a party, it is entitled to seek leave of the Court and file the appeal against the enhanced award and decree of the Civil Court under Section 26 or of the judgment and decree under Section 54 or is entitled to file writ petition under Art.226 and assail its legality or correctness. When the award made under Section 11 of the Collector is vitiated by fraud, collusion or corruption, the beneficiary is entitled to challenge it in the writ petition apart from the settled law that the conduct of the Collector or Civil Judge is amenable to disciplinary enquiry and appropriate action. These are very valuable and salutary rights. Moreover in the language of Order 1 Rule 10 C.P.C. in the absence of the beneficiary who ultimately is to bear the higher compensation, no complete and effectual determination of binding just and proper compensation to the acquired land would be made. So it is concomitantly a proper party if not a necessary party to the proceedings under Order 1, Rule 10, C.P.C. The denial of the right to a person interested is in negation of fair and just procedure offending Art.14 of the Constitution."

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5. The learned Advocate for respondent nos.1 & 2 submitted that it was obligatory for the Collector when he made a reference to inform the acquiring body because the reference is filed under Section 18 against the award passed by the Collector and therefore, there is no fault on the part of the respondent nos.1 & 2 in making or not making party to the acquiring body in the present petition. However, in view of the Apex court Judgment, we do not find any substance in the contention raised on behalf of the respondent nos.1 & 2. What we find is that the Konkan Railway should have been made a party in a reference and since it is an admitted position that the Konkan Railway is not a party to the proceedings, the order passed by the Civil Judge, Senior Division in Land Reference No.23/96 is not sustainable in law and requires to be set aside.

6. The learned Advocate for the respondent nos.1 & 2 submitted that in all these process respondent nos.1 & 2 have been put to an un-necessary harassment and inconvenience. He submitted that the lands of the respondent nos.1 & 2 have been acquired and inadequate compensation has been paid and when he got an enhanced compensation from the Civil Judge, Senior Division, the present acquiring body have come forward. In fact, as a result of the lapses on the part of the State Government, the appellants are put to advantageous position since they are not made a party and since they are getting matter remanded back. He submitted that respondent nos.1 & 2 are poor agriculturists and even if the matter is remanded back, they should not be put to unnecessary harassment and inconvenience. On the basis of the evidence which has been led by the respondents, the Civil Judge has considered the market price in view of the test laid down under Section 23 and has enhanced the compensation and therefore, the learned Advocate for the respondent nos.1 & 2 submitted that even though for want of a party, the order is required to be set aside and the matter is required to be ramanded. Yet respondent nos.1 & 2 be paid some amount out of the enhanced amount. He further submitted that in case the order is modified by the reference court after remand of the case the respondent nos.1 & 2 will return back the amount. He further submitted that according to him in any eventuality the amount will not be varied, even the matter is heard after giving opportunity to the appellants, yet he had showed his willingness to give a solvent surety.

7. The learned Advocate for the appellants vehemently opposed for any direction to deposit the amount. She submitted that the enhancement had

taken place because the State Government who was participating in the proceedings have not led any evidence and for that purpose the appellants should not be put to any sufference.

8. We have considered both sides. We find that it is a fact that respondent nos.1 & 2 have lost their land for public purpose and the appellants are carrying out the activitiy of transporting the passengers and the goods and the business is being carried out by the appellants. Apart from that, what we find is that in case the respondent nos.1 & 2 prove the market price as they have proved in the present matter in the absence of the appellants, then the respondent nos.1 & 2 will be entitled to the said amount. What we find is that since it is an amount of compensation, some relief should be granted in favour of the respondent nos.1 & 2, while we are granting order of the remand in favour of the appellants. The equity can be adjusted and we found that in the following manner equities can be adjusted.

9. In the result, the appeal is partly allowed. The order passed by the Civil Judge, Senior Division, Ratnagiri in a Land Reference No.23 of 1996 on 3.1.2001 is hereby set aside and the matter is remanded back to the Civil Judge, Senior Division, Ratnagiri. The appellants shall suo-moto appear before the Civil Judge, Senior Division, Ratnagiri on 23.11.2004 and shall file a written statement. After filing of the written statement, the Civil Judge, Senior Division, Ratnagiri shall recast the issues within a period of one week. One weeks time shall be granted to both sides to place list of witnesses and thereafter within one week the matter shall be listed for final hearing. At the final hearing, it will be open for the respondents to lead evidence of the additional witnesses. It will be equally open for the appellants to cross-examine the respondents' witnesses and the respondents (the earlier examined witnesses and the later on examined witnesses). Thereafter it will be open for the appellants to lead his own evidence and thereafter the matter will be closed. After closure of the matter, within a period of 15 days, arguments shall be heard by the

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Civil Judge, Senior Division, Ratnagiri and within a period of one week thereafter, the Judgment shall be delivered. This schedule shall be strictly followed by all the parties and the Civil Judge, and the parties are directed to co-operate with the Civil Judge, Senior Division, Ratnagiri.

10. We find it appropriate to direct the appellants to deposit amount of 50% enhanced compensation including the solatium, component and interest as directed in the order dated 3.1.2001 by the Civil Judge, Senior Division, Ratnagiri. The said amount shall be deposited within 3 weeks from today in the court of Civil Judge, Senior Division, Ratnagiri. On deposit of such amount, the Civil Judge, Senior Division, shall release the 50% of the said deposited amount in favour of the respondent/claimants without any surety and if the respondents tender a solvent surety in respect of rest of the 50% , the same shall be released in favour of respondent nos.1 & 2. Costs costs in cause.

11. Any observations made in this order shall not be taken into consideration by the Reference Court. The Reference court shall decide the matter on its own merits.

. Parties to act on an ordinary copy of this order duly authenticated by the P.S./Sheristedar of this court as a true copy.

(R.S.Mohite,J) (S.B.Mhase,J)@@
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